

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:	:	Chapter 11
	:	
WW WAREHOUSE, INC., <i>f/k/a</i>	:	Case No. 03-13655 (JBR)
WOODWORKERS WAREHOUSE, INC.	:	
	:	Related Documents: 745, 751
Debtor.	:	
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**DESIGNATION OF ITEMS TO BE INCLUDED IN RECORD ON APPEAL  
AND STATEMENT OF ISSUES BY APPELLANT BANK OF AMERICA**

Appellant Bank of America, N.A. (the "Appellant"), as agent for Foothill Capital Corporation, Bank of America, N.A. and Transamerica Capital Corporation (collectively, the "Lenders"), by and through its undersigned counsel, Buchanan Ingersoll PC, hereby files its Designation of Items to be Included in the Record on Appeal and Statement of Issues on Appeal.

**I. Designation of Items to be Included in the Record on Appeal**

Appellant designates the following items to be included in the record on appeal:

D.I.	Description
<b><i>A.</i></b>	<b><i>Fee Application</i></b>
470	Bank of America's Motion to Authorize Reimbursement of Fees and Expenses to Secured Creditor Pursuant to 11 U.S.C. 506 (b). Entered 07/14/2004.
471	Application for Compensation - Bank of America's Application in Support of Motion for Reimbursement of Lenders' Fees and Expenses to Secured Creditor Pursuant to 11 U.S.C. 506(b) (related to 470). Entered 07/14/2004.
571	Objection of the WW Warehouse, Inc. Liquidation Manager to the Motion for Reimbursement of Fees and Expenses to Secured Creditor Pursuant to 11 U.S.C. Section 506(b) and Bank of America's Application in Support of its Motion, filed by The Buckley Group, the Liquidation Manager. (Related to 470, 471.) Entered 08/18/2004.
677	Memorandum of Decision On Bank Of America's Motion For

	Reimbursement Of Lenders' Fees And Expenses To Secured Creditor. (Related to 470, 471.) Entered 11/15/2004.
678	Order On Bank Of America's Motion For Reimbursement Of Lenders' Fees And Expenses To Secured Creditor. (Related to 677 ) Signed on 11/12/2004, entered 11/15/2004.
<b>B.</b>	<b><i>Stay Motion</i></b>
681	Motion To Temporarily Stay the Obligations Under Paragraph 3 of the Court's November 12, 2004 Order, filed by Bank of America. (Related to 677, 678.) Entered: 11/18/2004
680	Motion to Shorten Time for Hearing on Motion for Order Temporarily Staying Obligations under Paragraph 3 of the Court's November 12, 2004 Order, Filed by Bank of America. Entered: 11/18/2004
682	Letter to Judge Rosenthal re: Emergency Request for Stay of Certain Provisions, Filed by Bank of America. (Related to 680, 681.) Entered: 11/18/2004.
683	Opposition Of The Liquidation Manager To Bank Of America's Motion To Shorten Time For Hearing On Motion For Order Temporarily Staying The Obligations Under Paragraph 3 Of The Court's November 12, 2004 Order And To Bank Of America's Motion For Order Temporarily Staying The Obligations Under Paragraph 3 of the Court's November 12, 2004 Order. (Related to 680, 681.) Entered 11/19/2004.
687	Affidavit/Declaration of Service Regarding Opposition Of The Liquidation Manager To Bank Of America's Motion To Shorten Time For Hearing On Motion For Order Temporarily Staying The Obligations Under Paragraph 3 Of The Court's November 12, 2004 Order And To Bank Of America's Motion For Order Temporarily Staying The Obligations Under Paragraph 3 of the Court's November 12, 2004 Order. (Related to 683.) Entered 11/22/2004.
684	Order Denying Shortening Time For Hearing On Motion For Order Temporarily Staying The Obligations Under Paragraph 3 Of The Court's November 12, 2004 Order. (Related to 680, 678) Signed on 11/19/2004, entered 11/22/2004.
685	Order (Amended) on Bank of America's Motion For Reimbursement of Lender's Fees and Expenses to Secured Creditor (related to 678 ) Order Signed on 11/19/2004, entered 11/22/2004.
686	Order Denying Staying Obligations Under Paragraph 3 of the Court's November 12, 2004 Order (Related to 678) Order Signed on 11/19/2004, entered 11/22/2004.
<b>C.</b>	<b><i>Motion to Reconsider</i></b>
688	Bank of America's Motion to Reconsider the Court's November 12, 2004 Order and November 19, 2004 Order Pursuant to Federal Rules of Bankruptcy Procedure 9023 and 9024. (Related to 686, 677, 678, 680, 681, 682, 684, 685 ) Entered 11/24/2004.
707	Opposition Of The Liquidation Manager To Bank Of America's Motion For Relief From And/Or Reconsideration Of The Court's November 19, 2004 Order Pursuant To Federal Rules Of Bankruptcy Procedure 9023 And 9024. (Related to 688.) Entered: 12/08/2004.

719	Reply in Support of Motion for Relief from and/or Reconsideration of the Court's November 12, 2004 Order and November 19, 2004 Order Pursuant to Federal Rules of Bankruptcy Procedure 9023 and 9024. (Related to 707, 686, 688, 677, 678, 680, 681, 682, 684, 685.) Entered 12/15/2004.
737	Notice of Completion of Briefing. Entered 1/13/2005.
745	Order on Bank of America's Motion for Relief from and/or Reconsideration of the Court's November 12, 2004 and November 19, 2004 Order [sic] Pursuant to Federal Rules of Bankruptcy Procedure 9023 and 9024. Entered 1/26/2005.
751	Notice of Appeal from Order on Bank of America's Motion for Reimbursement of Lenders' Fees and Expenses to Secured Creditor Pursuant to 11 U.S.C. Section 506(b); Amended Order on Bank of America's Motion for Reimbursement of Lenders' Fees and Expenses to Secured Creditor Pursuant to 11 U.S.C. Section 506(b); and Order on Bank of America's Motion for Relief and/or Reconsideration of the Court's November 12, 2004 and November 19, 2004 Order Pursuant to Federal Rules of Bankruptcy Procedure 9023 and 9024. Entered 2/07/2005.
<b>D.</b>	<b><i>Motion to Strike</i></b>
729	Motion to Strike & Notice of Motion of the Liquidation Manager to Strike Reply of Bank of America in Support of Motion for Relief From and/or Reconsideration of the Court's November 12, 2004 Order and November 19, 2004 Order Pursuant to Federal Rules of Bankruptcy Procedure 9023 and 9024. Related to 688. Entered 12/17/2004.
731	Response to Motion of the Liquidation Manager to Strike Reply of Bank of America in Support of Motion for Relief from and/or Reconsideration of the Court's November 12, 2004 Order and November 19, 2004 Order Pursuant to Federal Rules of Bankruptcy Procedure 9023 and 9024 (Related to 729.) Entered 12/23/2004.
<b>E.</b>	<b><i>Cash Collateral Pleadings</i></b>
14	Debtor's Motion Pursuant to Sections 105(a), 361, 363, 503(b) and 507(b) of the Bankruptcy Code and Bankruptcy Rules 4001(b), (d) and 9014 for Entry of Interim and Final Orders (A) Authorizing Use of Cash Collateral (B) Granting Adequate Protection and Administrative Expense Priority and (C) Scheduling a Final Hearing on the Motion. Entered: 12/02/2003.
24	Interim Order (A) Authorizing Use of Cash Collateral (B) Granting Adequate Protection Pursuant to 11 U.S.C. Sections 361 and 363, and (C) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(b) and Local Rule 2002-1(b). (Related to D.I.14) Entered: 12/03/2003.
49	Second Interim Order (A) Authorizing Use of Cash Collateral (B) Granting Adequate Protection Pursuant to 11 U.S.C. Sections 361 and 363, and (C) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(b) and Local Rule 2002-1(b). Order Signed on 12/5/2003.
116	Order (Third Interim) (A) Authorizing Use of Cash Collateral (B) Granting Adequate Protection and (C) Scheduling a Final Hearing. Entered: 12/30/2003.
202	Fourth Interim Order (A) Authorizing Use of Cash Collateral (B) Granting

	Adequate Protection and (C) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(b) and Local Rule 2002-1(b). Order Signed on 1/27/2004, entered 01/29/2004.
243	Fifth Interim Order (A) Authorizing Use of Cash Collateral (B) Granting Adequate Protection Pursuant to 11 U.S.C. Sections 361 and 363, and (C) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(b) and Local Rule 2002-1(b). Entered 2/24/2004.
286	Sixth Interim Order (A) Authorizing Use of Cash Collateral (B) Granting Adequate Protection Pursuant to 11 U.S.C. Sections 361 and 363, and (C) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(b) and Local Rule 2002-1(b). Order signed 3/24/2004, entered 3/25/2004.
382	Certification Of Counsel Regarding: Final Order By Consent Authorizing Use Of Cash Collateral Pursuant To 11 U.S.C. §§ 361 And 363, And Terminating Restrictions Upon Use Of Cash Collateral. Entered 5/25/2004.
404	Certification Of No Objection Regarding Notice Of Proposed Final Order By Consent Authorizing Use Of Cash Collateral Pursuant To 11 U.S.C. §§ 361 And 363, And Terminating Restrictions Upon Use Of Cash Collateral. Entered 6/09/2004.
418	Final Order by Consent Authorizing Use of Cash Collateral Pursuant to 11 U.S.C. §§ 361 and 363, and Terminating Restrictions upon Use of Cash Collateral. Entered 6/15/2004.

Appellant respectfully reserves the rights to supplement and amend the items designated herein.

## **II. Statement of Issues on Appeal**

Appellant presents the following issues on appeal:

1. Did the Bankruptcy Court err as a matter of law by denying all fees requested in Bank of America's application for reimbursement of fees and expenses under Section 506(b) of the Bankruptcy Code, and requiring disgorgement of fees previously approved, solely as a result of Bank of America's failure to include certain information in the 506(b) application, without providing an opportunity to supplement or revise that application, as required by the rule in this circuit stated in In re Busy Beaver Building Centers, Inc., 19 F.3d 833 (3d. Cir. 1994)?

2. Did the Court otherwise commit an abuse of discretion in denying Appellant's Motion for Reconsideration, which included Bank of America's revised 506(b) application for fees and expenses formatted in the manner specified by the Court in its November 12, 2004 Order?

Appellant respectfully reserves the right to supplement and amend the list of issues on appeal designated herein.

Dated: February 17, 2005  
Wilmington, Delaware

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